U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30645692

Date: MAR. 29, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, who works as a director of product development and management for a technology company, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to noncitizens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that he meets the initial evidence requirements for this classification, either by demonstrating his receipt of a major, internationally recognized award or by satisfying at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter the United States to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country in the future.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

Here, because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner submitted evidence relating to five of these criteria, but the Director determined he fulfilled the requirements of only two: authorship of scholarly articles and performance in a leading or critical role for an organization that has a distinguished reputation, under 8 C.F.R. § 204.5(h)(3)(vi) and (viii). On appeal, the Petitioner asserts that he also made original contributions of major significance in his field and has commanded a high salary or other significantly high remuneration in relation to others. *See* 8 C.F.R. § 204.5(h)(3)(v) and (ix).

In determining that the Petitioner did not meet the "high salary" criterion at 8 C.F.R. § 204.5(h)(3)(ix), the Director found that he submitted comparative wage data that relied on average or median salary figures and did not demonstrate that the submitted data was for a similar position.

The record reflects the Petitioner provided a letter from his current employer and relevant supporting evidence documenting his job duties, salary earnings, and other guaranteed compensation. He also submitted comparative wage information from the U.S. Department of Labor and other credible sources, which provides a range of salaries (including high salaries) for similarly employed persons working in the same geographic area. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual (providing guidance on evaluating initial evidence of extraordinary ability under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)). While the Petitioner's job title does not exactly correspond to the occupational titles for which he provided wage data, his employer's description of his job duties reflects a sufficiently close match. The data was position-appropriate and otherwise supported the Petitioner's assertion that he earns a high salary. Therefore, we conclude he established, by a preponderance of the evidence, that he has commanded a high salary or other significantly high remuneration in relation to others as required by 8 C.F.R. § 204.5(h)(3)(ix).

With eligibility under this additional criterion, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. USCIS must now determine whether the record establishes the sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

On remand, the Director should evaluate the evidence and consider the petition in its entirety to make a final merits determination. The final merits determination should weigh the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), any other potentially relevant evidence in the record, and the Petitioner's claims and evidence on appeal.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.